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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: **AUG 22 2013** OFFICE: NEBRASKA SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner describes itself as a construction business. It seeks to permanently employ the beneficiary in the United States as a senior engineer. The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

At issue in this case is whether the beneficiary possesses an advanced degree as required by the terms of the labor certification and the requested preference classification.

The petitioner's appeal is properly filed and makes a specific allegation of error in law or fact. The AAO conducts appellate review on a *de novo* basis.¹ The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.²

As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL).³

Part H of the labor certification states that the offered position has the following minimum requirements:

- H.4. Education: Master's Degree, Civil Engineering.
- H.5. Training: None required.
- H.6. Experience in the job offered: None required.
- H.7. Alternate field of study: None accepted.
- H.8. Alternate combination of education and experience: None accepted.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: None accepted.
- H.14. Specific skills or other requirements: None.

¹ See 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); see also *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. See, e.g., *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

² The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

³ See section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D); see also 8 C.F.R. § 204.5(a)(2).

Part J of the labor certification states that the beneficiary possesses a Master's degree in Civil Engineering from [REDACTED] United States, completed in 2010. The record contains a copy of the beneficiary's Master's degree in Civil Engineering from [REDACTED], United States, issued in 2010.

The director issued a Request for Evidence (RFE) seeking evidence of [REDACTED] accreditation. Following consideration of the petitioner's response, the director denied the petition and stated that the beneficiary's Master's degree was from a non-accredited school; and that as [REDACTED] has not been accredited by an agency recognized by the U.S. Department of Education the beneficiary is not qualified as an advanced degree professional.

On appeal, counsel for the petitioner states that USCIS made erroneous conclusions of law and fact by denying [REDACTED] I-140 petition based on the fact that the beneficiary did not have an advanced degree; and that the beneficiary has a master's degree in the relevant field. Counsel states that the beneficiary has a Master's degree in Civil Engineering from [REDACTED] which has been accredited by the International Accreditation Organization (IAO). Counsel asserts that the IAO is an independent and internationally recognized accrediting body that accredits international online universities; it awards accreditation status to educational institutions based on the Points Profile; and the IAO is recognized by the Global Education Support Forum for Working Adults. Counsel states that [REDACTED] has been evaluated on the basis of Organizational Management, Academic Management and Institutional Performances and has achieved the status of an educational institution that provides high education.

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1).

The regulation at 8 C.F.R. § 204.5(k)(2) defines the terms "advanced degree" and "profession." An "advanced degree" is defined as:

[A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

A "profession" is defined as "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." The occupations listed at section 101(a)(32) of the Act are "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

- (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
- (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

In addition, the job offer portion of the labor certification must require a professional holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(4)(i).

Therefore, an advanced degree professional petition must establish that the beneficiary is a member of the professions holding an advanced degree, and that the offered position requires, at a minimum, a professional holding an advanced degree. Further, an "advanced degree" is a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate, *or* a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty.

As set for above, the beneficiary possesses a Master's degree from [REDACTED], which has not been accredited by an agency recognized by the U.S. Department of Education. For the reasons set forth below, a degree from an unaccredited institution will not be considered an advanced degree under 8 C.F.R. § 204.5(k)(2).

In the United States, institutions of higher education are not authorized or accredited by the federal government.⁴ Instead, the authority to issue degrees is granted at the state level. However, state approval to operate is not the same as accreditation by a recognized accrediting agency.

According to the U.S. Department of Education (DOE), "[t]he goal of accreditation is to ensure that education provided by institutions of higher education meets acceptable levels of quality."⁵ Accreditation also ensures the nationwide recognition of a school's degrees by employers and other institutions, and also provides institutions and its students with access to federal funding.

Accrediting agencies are private educational associations that develop evaluation criteria reflecting the qualities of a sound educational program, and conduct evaluations to assess whether institutions meet those criteria.⁶ Institutions that meet an accrediting agency's criteria are then "accredited" by that agency.⁷

⁴ *See* <http://ope.ed.gov/accreditation>.

⁵ <http://www2.ed.gov/print/admins/finaid/accred/accreditation.html>.

⁶ *Id.*

⁷ *Id.*

The DOE and the Council for Higher Education Accreditation (CHEA) are the two entities responsible for the recognition of accrediting bodies in the United States. While the DOE does not accredit institutions, it is required by law to publish a list of recognized accrediting agencies that are deemed reliable authorities as to the quality of education provided by the institutions they accredit.⁸

The CHEA, an association of 3,000 degree-granting colleges and universities, plays a similar oversight role. The presidents of American universities and colleges established CHEA in 1996 "to strengthen higher education through strengthened accreditation of higher education institutions."⁹ CHEA also recognizes accrediting organizations. "Recognition by CHEA affirms that standards and processes of accrediting organizations are consistent with quality, improvement, and accountability expectations that CHEA has established."¹⁰ According to CHEA, accrediting institutions of higher education "involves hundreds of self-evaluations and site visits each year, attracts thousands of higher education volunteer professionals, and calls for substantial investment of institutional, accrediting organization, and volunteer time and effort."¹¹

The ETA Form 9089, section J related to where the beneficiary obtained his education, lists the address of [REDACTED].¹² The DOE and CHEA recognize WASC Senior College and University Commission as the accrediting association with jurisdiction over California, where [REDACTED] University is located.¹³ WASC Senior College and University Commission's website lists all accredited institutions within its jurisdiction. [REDACTED] University is not named as one of the accredited institutions. See [REDACTED] (accessed August 12, 2013). Therefore, [REDACTED] University has not been accredited by a recognized accrediting agency. Counsel has not provided evidence that the IAO is a recognized accrediting agency.

[REDACTED] is not listed as approved to operate in California by the Bureau for Private Postsecondary Education (BPPE). The State of California acknowledges that "accreditation is an indication of the quality of education offered," and that institutions "must be accredited by an agency recognized by the DOE in order for it or its students to receive federal funds." http://www.cpec.ca.gov/x_collegeguide_old/accreditation.asp. California's Education Code states

⁸ *Id.*

⁹ www.chea.org/pdf/Recognition_Policy-June_28_2010-FINAL.pdf.

¹⁰ *Id.*

¹¹ *Id.*

¹² The AAO notes that the [REDACTED] does not list a physical address for the school, which it claims is the world's largest online university with campuses located across six continents. See [REDACTED] (accessed August 21, 2013). A search of the California Secretary of State website did not result in a record for [REDACTED] showing any incorporation in the State of California. See <http://kepler.sos.ca.gov/> (accessed August 21, 2013).

¹³ See <http://www.chea.org/Directories/regional.asp>.

that approval to operate in California is granted after the BPPE has verified that the institution "has the capacity to satisfy the minimum operating standards." Cal. Ed. Code section 94887.

Accreditation provides assurance of a basic level of quality of the education provided by an institution as well as the nationwide acceptance of its degrees. A degree from a state approved institution that is unaccredited does not provide a sufficient assurance of quality. Therefore, since the beneficiary's master's degree from [REDACTED] is not from an accredited institution of higher education, it does not qualify as an advanced degree within the meaning of 8 C.F.R. § 204.5(k)(2).

After reviewing all of the evidence in the record, it is concluded that the petitioner has failed to establish that the beneficiary possessed at least a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate, or a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty.¹⁴ Therefore, the beneficiary does not qualify for classification as an advanced degree professional under section 203(b)(2) of the Act.

Similarly, as [REDACTED] is unaccredited, the petitioner has also not established that the beneficiary is qualified for the offered position. The petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. See *Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

As discussed above, the AAO does not consider the beneficiary to have a master's degree. As such, the evidence in the record does not establish that the beneficiary possessed the required education set forth on the labor certification by the priority date. Therefore, the petitioner has also failed to establish that the beneficiary is qualified for the offered position.

The beneficiary does not qualify for classification as a member of the professions holding an advanced degree under section 203(b)(2) of the Act. Furthermore, the petitioner failed to establish that the beneficiary possessed the minimum requirements of the offered position set forth on the labor certification by the priority date. The director's decision denying the petition is affirmed.

¹⁴ As set forth above, the labor certification allows only for the requirement of a master's degree and does not set forth any alternate combination of education and experience in the form of the regulatory defined bachelor's degree plus at least five years of progressive experience in the specialty. See 8 C.F.R. § 204.5(k)(2). Additionally, nothing in the record shows that the beneficiary has a bachelor's degree, or from where or when it was obtained.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.